

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 4624 OF 2017
IN
SECOND APPEAL STAMP NO. 11219 OF 2017

Abdul Ajij Abbdul Rashid and Ors.Applicants

Versus

Bhaurao Sakharam Malusare and Anr. ...Respondents

Mr. R.M. Deshmukh, Advocate for Applicants
Mr. S.D. Hiwrekar for Respondent No.1

CORAM: A.M. DHAVALÉ, J.
DATED : 23rd October, 2018

ORAL ORDER :

1. Heard the learned advocates. The Regular Civil Suit No.190/2009 filed by Baburao against six adjoining owners for perpetual injunction was dismissed with costs by trial Judge, Ghansawangi. In Regular Civil Appeal filed by the plaintiff (RCA 84/2014) defendant No.4, who was respondent No.4 - Shantabai died much before the arguments were advanced. This fact was not brought to the notice of the First Appellate Court. The appeal was allowed and injunction order was passed against all the defendants.

It is obvious that the said decree of injunction as against dead defendant No. 4 - Shantabai could be in nullity, but the death of Shantabai will not affect the validity of the injunction decree as against the remaining 5 defendants. Since Shantabai was dead in the first appeal and her legal heirs were not brought on record the first appeal stands abated against her. Therefore, the application for condonation of delay of 871 days and for bringing her LRs on record in the second appeal for the first time is not tenable. The application is therefore rejected as not maintainable.

2. Ad-interim relief is continued till the next date.
3. Call record and proceedings through special messenger.
4. Stand over to 01.11.2018.

(A.M. DHAVALA)
JUDGE

mta